

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD KAPLAN,

Plaintiff,

vs.

INTERNATIONAL DATA GROUP,
INC., et al.

Defendants.

No. 2:15-cv-00406-DSF-MAN(SSX)

PROTECTIVE ORDER

Judge: The Hon. Margaret
A. Nagle

Complaint Filed: Jan. 20, 2015

Final Pretrial Conf.: Mar. 7, 2016

Trial Date: Apr. 5, 2016

All future discovery filings shall
include the following language
on the cover page:
"[Referred to Magistrate Judge
Suzanne H. Segal]"

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or
private information requiring special protection from public disclosure and from

1 use for any purpose other than this litigation. Thus, the Court enters this Protective
2 Order. This Order does not confer blanket protections on all disclosures or
3 responses to discovery, and the protection it gives from public disclosure and use
4 extends only to the specific material entitled to confidential treatment under the
5 applicable legal principles. This Order does not automatically authorize the filing
6 under seal of material designated under this Order. Instead, the parties must
7 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does
8 not govern the use at trial of material designated under this Order.
9

10 **2. DESIGNATING PROTECTED MATERIAL**

11 **2.1 Over-Designation Prohibited.** Any party or non-party who
12 designates information or items for protection under this Order as
13 "CONFIDENTIAL" (a "designator") must only designate specific material that
14 qualifies under the appropriate standards. To the extent practicable, only those
15 parts of documents, items, or oral or written communications that require
16 protection shall be designated. Mass, indiscriminate, or routinized designations
17 are prohibited. Unjustified designations expose the designator to sanctions.
18 Designation under this Order is allowed if it is necessary to protect confidential or
19 commercially sensitive technical, sales, marketing, personal, or financial
20 information of the producing party (including any party to this action and any
21 non-party producing information or material voluntarily or pursuant to a subpoena
22 or a court order in connection with this action), or information that the producing
23 party is under a legal obligation to maintain as confidential. Material may not be
24 designated if it has been made public, or if designation is otherwise unnecessary to
25 protect a secrecy interest. If a designator learns that information or items that it
26 designated for protection do not qualify for protection at all or do not qualify for
27 the level of protection initially asserted, that designator must promptly notify all
28 parties that it is withdrawing the mistaken designation.

1 **2.2 Manner and Timing of Designations.** Designation under this Order
2 requires the designator to affix the applicable legend "CONFIDENTIAL" to each
3 page that contains protected material. For testimony given in deposition or other
4 proceeding, the designator shall specify all protected testimony and the level of
5 protection being asserted. The designator shall have up to 21 days from the
6 deposition or proceeding to make its designation.

7 **2.2.1** A party or non-party that makes original documents or materials
8 available for inspection need not designate them for protection until after
9 the inspecting party has identified which material it would like copied and
10 produced. During the inspection and before the designation, all material
11 shall be treated as CONFIDENTIAL. After the inspecting party has
12 identified the documents it wants copied and produced, the producing party
13 must designate the documents, or portions thereof, that qualify for
14 protection under this Order.

15 **2.2.2** Parties shall give advance notice if they expect a deposition or
16 other proceeding to include designated material so that the other parties can
17 ensure that only authorized individuals are present at those proceedings
18 when such material is disclosed or used. The use of a document as an
19 exhibit at a deposition shall not in any way affect its designation.
20 Transcripts containing designated material shall have a legend on the title
21 page noting the presence of designated material, and the title page shall be
22 followed by a list of all pages (including line numbers as appropriate) that
23 have been designated. The designator shall inform the court reporter of
24 these requirements. Any transcript that is prepared before the expiration of
25 the 21-day period for designation shall be treated during that period as if it
26 had been designated CONFIDENTIAL unless otherwise agreed. After the
27
28

1 expiration of the 21-day period, the transcript shall be treated only as
2 actually designated.

3 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
4 designate does not, standing alone, waive protection under this Order. Upon
5 timely assertion or correction of a designation, all recipients must make
6 reasonable efforts to ensure that the material is treated according to this Order.

7 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 All challenges to confidentiality designations shall proceed under L.R. 37-1
9 through L.R. 37-4.

10 **4. ACCESS TO DESIGNATED MATERIAL**

11 **4.1 Basic Principles.** A receiving party may use designated material only
12 for this litigation. Designated material may be disclosed only to the categories of
13 persons and under the conditions described in this Order.

14 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
15 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
16 designator, a receiving party may disclose any material designated
17 CONFIDENTIAL only to:
18

19 **4.2.1** The receiving party's outside counsel of record in this action
20 and employees of outside counsel of record to whom disclosure is
21 reasonably necessary;

22 **4.2.2** The officers, directors, and employees of the receiving party
23 where the receiving party is an entity, or the individual who is the receiving
24 party, to whom disclosure is reasonably necessary, and who have signed the
25 Agreement to Be Bound (Exhibit A);

26 **4.2.3** Experts retained by the receiving party's outside counsel of
27 record to whom disclosure is reasonably necessary, and who have signed
28 the Agreement to Be Bound (Exhibit A);

1 **4.2.4** The Court and its personnel;

2 **4.2.5** Outside court reporters and their staff, professional jury or trial
3 consultants, and professional vendors to whom disclosure is reasonably
4 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

5 **4.2.6** During their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the Agreement to
7 Be Bound (Exhibit A); and

8 **4.2.7** The author or recipient of a document containing the material,
9 or a custodian or other person who otherwise possessed or knew the
10 information.

11 **4.2.8** Nothing herein shall preclude a party from using or disclosing
12 information and/or documents which, at the time of disclosure, was already
13 in the recipient's possession or available to it from any other source having
14 no obligation to the party or nonparty witness which is the source of said
15 information and/or document or which is, or at any time hereafter becomes,
16 available to the public or which, after access is gained through disclosure in
17 this action, is at any time obtained by the recipient from any other person,
18 firm or company having no obligation to or relationship with the source of
19 said information.
20

21
22 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
23 **PRODUCED IN OTHER LITIGATION**

24 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-
25 compliance with a lawful subpoena or court order. The purpose of the duties
26 described in this section is to alert the interested parties to the existence of this
27 Order and to give the designator an opportunity to protect its confidentiality
28 interests in the court where the subpoena or order issued.

1 **5.2 Notification Requirement.** If a party is served with a subpoena or a
2 court order issued in other litigation that compels disclosure of any information or
3 items designated in this action as CONFIDENTIAL, that party must:

4 **5.2.1** Promptly notify the designator in writing. Such notification
5 shall include a copy of the subpoena or court order;

6 **5.2.2** Promptly notify in writing the party who caused the subpoena
7 or order to issue in the other litigation that some or all of the material
8 covered by the subpoena or order is subject to this Order. Such notification
9 shall include a copy of this Order; and

10 **5.2.3** Cooperate with all reasonable procedures sought by the
11 designator whose material may be affected.

12 **5.3 Wait For Resolution of Protective Order.** If the designator timely
13 seeks a protective order, the party served with the subpoena or court order shall
14 not produce any information designated in this action as CONFIDENTIAL before
15 a determination by the court where the subpoena or order issued, unless the party
16 has obtained the designator's permission. The designator shall bear the burden and
17 expense of seeking protection of its confidential material in that court.

18
19 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

20 **6.1** If a receiving party learns that, by inadvertence or otherwise, it has
21 disclosed designated material to any person or in any circumstance not authorized
22 under this Order, it must immediately (1) notify in writing the designator of the
23 unauthorized disclosures and all of the pertinent facts surrounding the
24 unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies
25 of the designated material, (3) inform the person or persons to whom unauthorized
26 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
27 to have such person or persons execute the Agreement to Be Bound (Exhibit A).
28

1 Compliance with the foregoing shall not prevent the designator from seeking
2 further relief from the Court.

3 **6.2** The receiving party shall maintain material designated as
4 CONFIDENTIAL in a secure and safe place, and shall exercise at least the same
5 degree of care in handling such material as is exercised by the recipient with
6 respect to its own confidential information of a similar nature, but in no event less
7 than reasonable care. If a party fails to abide by the terms of this Order, the party
8 will be subject to liability for such failure, with the Court to determine any
9 appropriate remedy or remedies. The party shall be subject to the jurisdiction of
10 this Court to any proceeding to enforce this Order. Each recipient of any material
11 designated CONFIDENTIAL produced in this action hereby agrees to be subject
12 to the jurisdiction of this Court solely for the purposes of the implementation and
13 enforcement of this Order.
14

15 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR**
16 **OTHERWISE PROTECTED MATERIAL**

17 Any party who produces material or information without intending to waive
18 a claim of privilege or other protection does not waive that claim if within ten (10)
19 days after the producing party actually discovers that privileged material or
20 information has been produced, the producing party identifies the material or
21 information produced and states the privilege asserted. If the privilege is thus
22 asserted, the receiving party must promptly return the specified material or
23 information and any copies. Nothing in this provision shall restrict a party from
24 challenging, in any way, the propriety of the privilege claim after the material or
25 information has been returned to the producing party.
26
27
28

1 **8. FILING UNDER SEAL**

2 Without written permission from the designator or a Court order, a party
3 may not file in the public record in this action any designated material. A party
4 seeking to file under seal any designated material must comply with L.R. 79-5.1.

5 When any designated material is filed with the Court, the material shall be
6 maintained under seal with the United States District Court for the Central District
7 of California, pursuant to this Order, after the parties comply with the procedures
8 set forth in Local Rule 79-5 for the filing of records under seal, or as otherwise
9 ordered by the Court. All such Confidential Information will be filed in a sealed
10 envelope that contains an indication of the general nature of the contents of the
11 envelope, and has endorsed thereon the title and docket number of this action and
12 a boldface label conspicuously placed on the front of the said envelope stating:

13 THIS ENVELOPE CONTAINS DOCUMENTS, THINGS, OR
14 TESTIMONY WHICH ARE "CONFIDENTIAL" AND SUBJECT
15 TO THE TERMS OF A PROTECTIVE ORDER OF THE
16 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT
17 OF CALIFORNIA. IT IS NOT TO BE OPENED OR THE
18 CONTENTS DISPLAYED OR REVEALED EXCEPT TO THIS
19 COURT AND ITS STAFF.
20

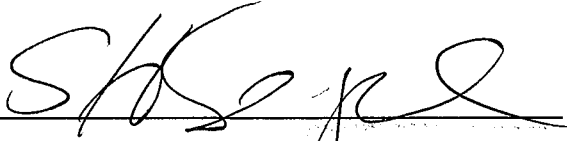
21 If a party receiving material designated CONFIDENTIAL requests to file
22 the material under seal pursuant to L.R. 79-5.1 but the Court denies the request,
23 then the receiving party may file the material in the public record unless (1) the
24 designator seeks reconsideration within four days of the denial (or within two days
25 if the receiving party seeks to file the material in connection with an ex parte
26 motion), or (2) as otherwise instructed by the Court.
27
28

1 **9. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, each party shall
3 return all designated material to the designator or destroy such material, including
4 all copies, abstracts, compilations, summaries, and any other format reproducing
5 or capturing any designated material. The receiving party must submit a written
6 certification to the designator by the 60-day deadline that (1) identifies (by
7 category, where appropriate) all the designated material that was returned or
8 destroyed, and (2) affirms that the receiving party has not retained any copies,
9 abstracts, compilations, summaries, or any other format reproducing or capturing
10 any of the designated material. This provision shall not prevent counsel from
11 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
12 hearing transcripts, legal memoranda, correspondence, deposition and trial
13 exhibits, expert reports, attorney work product, and consultant and expert work
14 product, even if such materials contain designated material. Any such archival
15 copies remain subject to this Order.

16 IT IS SO ORDERED.

17
18
19 DATED: 8/14/15


The Hon. Margaret A. Nagle
United States Magistrate Judge

SUZANNE H. SEGAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A
AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Protective Order that was issued by the United States District Court for the
Central District of California on _____ [date] in the case of *Ronald Kaplan v.*
International Data Group, Inc., et al. (Cause No. 2:15-cv-00406-DSF-MAN). I
agree to comply with and to be bound by all the terms of this Protective Order,
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment for contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Protective Order to
any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing this Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
[printed name]
Signature: _____
[signature]